IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1801 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANJUBEN W/O. NATAWARBHAI JERAMBHAI KOLI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR CR ABICHANDANI for the Petitioner.

MR PRAVIN GONDALIYA for Petitioner No. 1

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged her detention order dated 21.12.2003. By the impugned order, the petitioner-detenue is detained as a 'bootlegger', under the provisions of the Prevention of Anti-social Activities Act, 1985 ("PASA", for short).

Along with the detention order, the detenue was also served with the grounds of detention.

In the grounds of detention, there is a mention about three criminal cases against the petitioner. The authority, after having been subjectively satisfied about the alleged illegal activities undertaken by the petitioner, has detained her under PASA as a 'bootlegger'. The said order is challenged by the petitioner in this petition.

The learned Advocate for the petitioner submitted that there is a delay in despatching the representation of the petitioner and the delay is not properly explained. The representation was received by the detaining authority on 13th February, 2004; yet, the representation remained unattended for about 3 days and, ultimately, it was despatched on 17th February, 2004. He submitted that in view of the delay in despatching the representation, the order of detention is required to be set aside. He has relied upon an unreported decision of this Court (Coram : A.L. Dave, J.) in Mulshankar Kalyanbhai Jani v. State of Gujarat, rendered in Special Civil Application No.9664 of 1999, on 16.3.2000, wherein on the ground of unexplained delay in despatching the representation, this Court has set aside the detention order. In paragraph 6, this Court has observed as under :-

" ... ...

6. Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on 18.11.1999. The detaining authority has not explained as at what point of time, the representation was received on 16.11.1999 and how it was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarded till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day,

probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation.

... ..."

In the instant case, in the affidavit-in-reply filed by the Detaining Authority, the delay part is dealt with in paragraph 13, wherein the Detaining Authority ha stated as under :-

" ... ...

13. With reference to paras 4(P) & (Q) of the petition, I say that the representation dated 11/12-2-2004 was received by me on 13.2.2004 and as 14th & 15th February, 2004 were public holidays, the same was forwarded to the State Government as well as to the Advisory Board on 17.2.2004 and the detenu was informed accordingly through the jail authorities and she has made necessary endorsement acknowledging receipt of the same. I say that copies of all relevant documents which have been referred to and relied upon by me for passing the order of detention against the detenu, have been supplied to her along with the grounds of detention. Except those documents, I have not referred to and relied upon any other documents and hence question of supplying copy of any other documents does not arise.

... ..."

It is, however, required to be noted that when the authority has received the representation on 13th February, 2004 and subsequent two days were holidays, the authority should have despatched the representation on the very day. Even if that was not done, there is no explanation as to why the representation remained unattended on 16th February, 2004. This is a case wherein there is delay in despatching the representation to the State Government by the Detaining Authority. At least in despatching the representation, there should not have been any delay, because, it could have been done immediately. There is absolutely no explanation as to why on 16th February, 2004 it was not despatched at all. In this view of the factual aspect as well as considering the view taken by the learned single Judge, since there

is no explanation for not despatching the representation to the State Government on the next working day after the holidays, on 16th February, 2004. and when it is an admitted fact that the representation remained unattended even on the third day, i.e. on 16th February, 2004, even though the representation was received on 13th February, 2004, on this very ground, this petition is required to be allowed.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless she is required in connection with any other case. The Rule is made absolute accordingly.

(P.B. Majmudar, J.)

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(apj)